STATE OF WEST VIRGINIA
OFFICES OF THE INSURANCE COMMISSIONER
MICHAEL D. RILEY, COMMISSIONER

12-EO-04

IN THE MATTER OF: Proclamation of State of Emergency by Governor Earl Ray Tomblin, dated July 1, 2012.

EMERGENCY ORDER

NOW COMES MICHAEL D. RILEY, Insurance Commissioner for the State of West Virginia (hereinafter "Commissioner"), by virtue of the authority vested in him pursuant to West Virginia Code Section 33-2-10a, who does **FIND and DECLARE** as follows:

WHEREAS, beginning the twenty-ninth day of June, Two Thousand Twelve, severe storms caused heavy rainfall, flooding, high winds, downed trees, mudslides, and road and stream blockages resulting in considerable damage to private and public property in the fifty-five counties comprising the State of West Virginia;

WHEREAS, on the first day of July, Two Thousand Twelve, Governor Earl Ray Tomblin entered a Proclamation declaring a State of Emergency for the fifty-five counties comprising the State of West Virginia; and

IT IS THEREFORE DECLARED that an insurance emergency exists in the fifty-five counties comprising the State of West Virginia;

ACCORDINGLY, IT IS HEREBY ORDERED that normal time frames for claim handling and settlement as set forth in West Virginia Code of State Rules Title 114, Series 14, Section 5 and subsections 6.2, 6.3, 6.7, 7.3.c, and 7.5 are suspended in the fifty-five counties comprising the State of West Virginia for claims arising out of the severe storms causing heavy

rainfall, flooding, high winds, downed trees, mudslides, and road and stream blockages which swept through the state of West Virginia on the twenty-ninth day of June, Two Thousand Twelve, and only for those claims.

IT IS FURTHER ORDERED that the following rules shall replace the suspended sections of West Virginia Code of State Rules Title 114, Series 14 for such claims:

114-14-5.1. Acknowledgment of notices of claims. -- Every insurer, upon receiving notification of a claim shall, within thirty (30) working days, acknowledge the receipt of such notice unless full payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

114-14-5.2. Answer of inquiries from Insurance Commissioner. -- Every insurer, producer or other licensee, upon receipt of any inquiry other than a notice of third-party administrative complaint from the Insurance Commissioner shall, within thirty (30) working days of the date appearing on the inquiry, furnish the Commissioner with a complete written response to the inquiry. A "complete written response" addresses all issues raised by the claimant or the Commissioner and includes copies of any documentation requested. This subsection is not intended to permit delay in responding to inquiries by the Commissioner or his or her staff in conjunction with a scheduled examination on the insurer's premises.

114-14-5.3. Replies to other pertinent communications. -- A reply shall be made within thirty (30) working days of receipt by the insurer to all other pertinent communications from a claimant which reasonably suggest that a response is expected.

114-14-5.4. Provisions of assistance to first-party claimants. -- Every insurer, upon receiving notification of a claim, shall promptly provide necessary claim forms, instructions, and

reasonable assistance so that first-party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within thirty (30) working days of notification of a claim constitutes compliance with subsection 5.1. of this section.

114-14-6.2. Establishment of investigatory procedures. --

a. Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within thirty (30) working days of receipt of notice of claim.

b. Every insurer shall provide to every first-party claimant, or to the claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of such claimant, within thirty (30) working days of receiving notice of the claim.

c. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent promptly provides written notification to the person filing the claim that the agent is not authorized to receive notices of claim.

114-14-6.3. Duty after investigation. -- Within twenty (20) working days of completing its investigation, the insurer shall deny the claim in writing or make a written offer, subject to policy limits and, with respect to medical professional liability claims, subject to applicable statutory requirements set forth in the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11.

114-14-6.7. Notice of necessary delay in investigating claims. -- If the insurer needs more than forty-five (45) calendar days from the date that a proof of loss from a first-party claimant or notice of claim from a third-party claimant is received to determine whether a claim should be accepted or denied, it shall so notify the claimant in writing within fifteen (15) working days after the forty-five day period expires. If the investigation remains incomplete, the insurer shall provide

written notification of the delay to the claimant every forty-five (45) calendar days thereafter until the investigation is complete. All such notifications must set forth the reason(s) additional time is needed for investigation. Where there is a reasonable basis supported by specific information available for review by the Commissioner that a claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection: Provided, That the insurer shall notify the claimant of the acceptance or denial of the claim within a reasonable time allowing for full investigation. Nothing contained in this subsection requires an insurer to disclose any information that could reasonably be expected to alert a claimant to the fact that the subject claim is being investigated as a suspected fraudulent claim.

114-14-7.3.c If the insurer intends to exercise its rights to inspect damages prior to repair, it has thirty (30) working days from the date of receipt of notice of loss to inspect the insured's damaged motor vehicle at a place and time reasonably convenient to the insured. In addition, negotiations shall commence and a good faith offer of settlement shall be made within the aforesaid thirty (30) day period.

114-14-7.5. Unreasonable delay. -- If any element of a physical damage claim remains unresolved more than thirty (30) working days from the date of receipt of proofs of loss by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for the delay in the claim settlement unless reasonable grounds exist to suspect fraud or arson. An updated letter of explanation shall be sent every thirty (30) calendar days thereafter until all elements of the claim are either honored or rejected.

IT IS FURTHER ORDERED that this Emergency Order shall remain in effect for such claims reported through and including August 3, 2012, unless extended by **MICHAEL D. RILEY**, Insurance Commissioner for the State of West Virginia.

ORDERED this 2nd day of July, 2012.

Michael D. Riley
Insurance Commissioner of the
State of West Virginia